



## Access to Support for Patients with Disabilities in Hospital Settings

### Frequently Asked Questions (FAQ)

June 5, 2020

On May 11, 2020, a joint notice was issued by the Maryland Department of Health and the Maryland Department of Disabilities entitled “Access to Support for Patients with Disabilities in Hospital Settings”. The purpose of the notice was to notify hospitals to adopt visitation policies that comply with both applicable U.S. Centers for Disease Control and Prevention (CDC) guidance and federal regulations and recognize the needs of individuals with disabilities.

**NOTE: The information outlined in this document are restricted to the use during the state of emergency declared by Governor Hogan to deal with the threat of COVID-19 and will expire immediately upon termination of the state of emergency.**

Below are some FAQs to assist hospitals in developing visitation policies in compliance with the previously released notice.

#### 1. What is the definition of “disability”, as used in the notice?

The definition of disability is the Americans with Disabilities Act definition:

42 U.S.C. § 12102

As used in this chapter:

(1) Disability The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking,

standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(l) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

## **2. What is the definition of a support person in a hospital setting?**

- a. Support persons provide personal, behavioral and/or communication supports not otherwise provided in a hospital setting
- b. Using a support person is applicable when the patient requires services for communication<sup>1</sup> and behavioral stabilization, and such services are not covered in a hospital setting.

## **3. What types of patients would a support person be appropriate for in a hospital setting?**

- a. Types of patients that a support person would be appropriate for in a hospital setting include but are not limited to:
  - i. Patients with intellectual or developmental disabilities,
  - ii. Patients with physical disabilities or limitations,
  - iii. Patients with neurocognitive disorders

## **4. Who can fill the role of a support person?**

- a. Support persons can include but are not limited to family members, personal care assistants, or disability service providers.
- b. A patient may designate up to two support persons during their stay, but only one may be present at any given time.

## **5. What considerations are there for support persons and COVID -19 symptoms?**

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<sup>1</sup> ‘Services for communication’ are separate from any American Sign Language interpreter service for the Deaf / Hard of Hearing population or Language Line service provided by the hospital.

***In compliance with hospital policy***, all individuals who request to be designated as a support person to a specified patient must:

- a. Be subject to assessment of COVID-19 symptoms by hospital staff upon initial entry to the hospital and periodically during their stay for the approval of the designation of a support person for a specified patient.
- b. Persons with COVID 19 symptoms shall not be permitted to serve as a support person and must immediately leave the hospital
- c. Approval of the designation of a support person for a specified patient can be revoked due to presentation of COVID 19 symptoms.

**6. What are the considerations for PPE use?**

- a. All approved support persons shall be required to don appropriate PPE and comply with existing hospital policies regarding use and conservation of that PPE.